

BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF HAWAII

FILED  
2008 NOV 12 P 1:19  
PUBLIC UTILITIES  
COMMISSION

In the Matter of )

PUBLIC UTILITIES COMMISSION )

Docket No. 2008-0274

Instituting a Proceeding to Investigate )  
Implementing a Decoupling Mechanism )  
for Hawaiian Electric Company, Inc., and )  
Hawaii Electric Light Company, Inc., and )  
Maui Electric Company, Limited. )  
\_\_\_\_\_ )

MOTION TO INTERVENE OF  
HAIKU DESIGN AND ANALYSIS  
AND  
CERTIFICATE OF SERVICE

Carl Freedman  
Haiku Design & Analysis  
4234 Hana Hwy.  
Haiku, HI 96708

(808) 572-2519

BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF HAWAII

In the Matter of	)	
	)	
PUBLIC UTILITIES COMMISSION	)	Docket No. 2008-0274
	)	
Instituting a Proceeding to Investigate	)	
Implementing a Decoupling Mechanism	)	
for Hawaiian Electric Company, Inc., and	)	
Hawaii Electric Light Company, Inc., and	)	
Maui Electric Company, Limited.	)	
_____	)	

**MOTION TO INTERVENE OF HAIKU DESIGN AND ANALYSIS**

Carl Freedman, dba Haiku Design and Analysis (HDA) respectfully applies to be admitted as an intervenor in Docket No. 2008-0274.

HDA is a consulting firm located on the Island of Maui providing services in the field of public utility planning and regulatory affairs. HDA is registered as a business in the State of Hawaii as a sole proprietorship in the name of James Carl Freedman dba Haiku Design and Analysis, 4234 Hana Hwy., Haiku, Hawaii 96708.

**1. Nature of applicant's statutory or other right to participate.**

HDA relies on (a) the Rules of Practice and Procedure Before the Public Utilities Commission, Hawaii Administrative Rules, Title 6, Chapter 61, (b) Hawaii Revised Statutes, Chapter 91 – Administrative Procedures, and (c) the Commission's "Order Initiating Investigation," in this docket, dated October 24, 2008, which established the docket and identifies procedures for intervention.

**2. Nature and extent of the applicant's interest.**

HDA is a consulting firm providing services in the subject area of public utility planning and regulation. HDA is an active participant in several venues in Hawaii serving the public interest, pro bono, in promoting sound energy policy. These venues include, for example, participation in the Act 95 proceedings of the Public Utility Commission of the State of Hawaii (Commission) and service on the Hawaii Energy Policy Forum's Steering Committee and as Chair of its Regulatory Reform Working Group. HDA's interests in this proceeding are (a) to serve the public's interests generally by assisting the Commission to adopt sound regulatory and energy policies and (b) to preserve HDA's interests and standing as a consulting firm that is knowledgeable, apprised of events and active in the field of utility regulation.

3. The effect of the outcome of the proceeding on applicant's interest.

The instant proceeding will establish the general framework and specific terms for decoupling mechanisms to be implemented for most of Hawaii's electric utilities. The decoupling mechanisms considered in this docket will have broad effects on many aspects of public utility regulation. The outcome of this proceeding will clearly affect the applicant's interests described in section (2) above.

4. Other means available whereby the applicant's interest may be protected.

There are no other practical means to serve the applicant's interests. By opening the instant docket the Commission has determined that the issues regarding implementation of decoupling mechanisms for Hawaii's energy utilities will be decided in this contested case proceeding. The Commission has identified intervention or participation in this proceeding

as the proper means to address the issues identified in this proceeding and to provide comments to the Commission.

5. Extent to which applicant's interest will not be represented by existing parties.

HDA's interests described in section (2) will not be fully represented by the existing parties.

HDA notes that all of the existing parties are signatories to the "Agreement" that is a principal subject of the instant docket. Each of the existing parties is bound by the terms of the Agreement and is therefore unable to represent any interests that are not consistent with the specific terms of the agreement. None of the existing parties, for example, would be free to advocate for any of the types of decoupling mechanisms previously proposed to the Commission, including the revenue per customer mechanism recently recommended to the Commission in the "Hawaii Clean Energy Initiative Regulatory and Policy Framework Strawman". HDA believes that the Commission should at least fairly consider mechanisms other than the specific mechanism proposed by the signatories in the Agreement..

6. Extent to which applicant's participation can assist in the development of a sound record.

HDA has expertise in the specific subject matter and issues of the instant docket. HDA provided services in several prior dockets before the Public Utilities Commission of the State of Hawaii. HDA's principal, Carl Freedman, was the first person to explain and propose adoption of a decoupling mechanism to the Commission (1991) and testified on behalf of the Consumer Advocate in support of implementing revenue decoupling in several later dockets. Most recently, Carl Freedman presented testimony regarding the merits of

revenue decoupling and designed and proposed a decoupling mechanism for Hawaiian Electric Company, Inc. (HECO) as a consultant for Rocky Mountain Institute as an expert witness in Docket No. 05-0069 (the "Energy Efficiency Docket").

7. Extent to which applicant's participation will broaden the issues or delay the proceeding.

Applicant's participation will not broaden the issues or delay the proceeding.

HDA notes that the Order Initiating Investigation in this docket does not explicitly list the issues in the proceeding. HDA presumes that the issues in this proceeding will include (1) whether a decoupling mechanism should be implemented, (2) whether the specific mechanism identified in the Agreement or some other mechanism is the preferred mechanism and (3) to what extent each proposed decoupling mechanism will increase the staff, workload and budget requirements of the Commission and the Consumer Advocate. HDA encourages the Commission to include these considerations in its "scoping paper on decoupling that will be issued by the commission in this docket."<sup>1</sup>

HDA will abide by the schedule of proceedings agreed by the parties and/or determined by the Commission in this docket and will not delay the proceeding. In discussing a stipulated schedule of proceedings in this docket, however, HDA will advocate for sufficient time for the subject matter in the docket to be sufficiently examined considering, to the extent possible, the goal of completing the docket and issuing a decision by the time an interim decision will be issued in Docket No. 2008-0083.

8. Extent to which the applicant's interest in the proceeding differs from that of the general public.

---

<sup>1</sup> Order Initiating Investigation in the instant docket at first paragraph on page 5

Applicant's interest is different from the general public as described in section (2) above.

HDA notes that the Department of Commerce and Consumer Affairs, Division of Consumer Advocacy (Consumer Advocate) is usually relied upon to represent the concerns of the general public. In this docket, however, the Consumer Advocate is a signatory to and has already agreed to all of the terms of the "Agreement" that is a principal subject of the instant docket. As a signatory, it is not clear to what extent the Consumer Advocate can fully consider the concerns or represent the interests of stakeholders who may not agree with some terms of the Agreement or that have not yet even stated their concerns or positions on the merits of the decoupling mechanisms proposed in the Agreement. In this docket, because of the unprecedented extent to which the Consumer Advocate is a proponent bound by contract to specific terms of proposed actions, the Commission should not limit intervention by applicants based on any premise that the Consumer Advocate sufficiently represents the interests of the general public.

9. Whether the applicant's position is in favor or opposition to the relief sought.

HDA is in favor of implementing revenue decoupling for Hawaii's electric energy utilities but believes that the Commission should at least fairly consider other decoupling mechanisms than the specific mechanism proposed in the Agreement.

Regarding the question of interest and standing in determining a party's right to intervene in this proceeding.

The instant docket is an investigative proceeding initiated by the Commission to establish policies that will apply broadly to all investor-owned electric utilities in the State of Hawaii. Although this docket is a contested case proceeding, the purposes of the proceeding, the issues it addresses and the context of the proceeding in establishing policies to be broadly applied, all fall entirely within the Commission's legislative "rulemaking" function as it is generally conceived in the principles of administrative law.

For example, all of the purposes and issues in this proceeding could alternatively be addressed in the context of a rulemaking proceeding as provided in HRS Chapter 91. Although initiated as a quasi-judicial contested case proceeding, the purpose of the docket is not to determine facts that will be applied to a specific application or rate case according to existing rules and precedents. Rather, the purpose is to establish new policies in a context that offers no precedent in Hawaii that will be applied broadly (i.e. to all investor owned electric utilities). In a formal rulemaking proceeding that would similarly address the determination of new policies to be applied broadly there would be no restriction whatsoever on who would have a right to provide the guidance upon which the Commission could rely.

The contested case format for the policy making purposes of the instant docket is appropriate and well accepted. When addressing the question of standing in determining the right of applicants to intervene and participate, however, the Commission should consider the essentially legislative purposes and context of the proceeding and should be deliberately permissive. The standard for assessing the interest, standing and right to

intervene in a contested case proceeding that focuses primarily on broad policy matters that could alternatively be addressed by formal rulemaking procedures should be the same as the standard used in formal rulemaking procedures: categorically permissive.

Based on the foregoing, Carl Freedman, dba Haiku Design and Analysis respectfully requests that the Commission grant this motion to intervene in Docket No. 2008-0274.

Dated: November 10, 2008; Haiku, Hawaii

Signed: CARL FREEDMAN  
Carl Freedman  
dba Haiku Design and Analysis



CERTIFICATE OF SERVICE

I hereby certify that I have this date served a copy of the foregoing Motion to Intervene upon the following entities, by causing a copy to be mailed, postage prepaid, and properly addressed:

CATHERINE P. AWAKUNI, EXECUTIVE DIRECTOR  
DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS  
DIVISION OF CONSUMER ADVOCACY  
P.O. BOX 541  
Honolulu, Hawaii 96809

[2 copies]

DARCY L. ENDO-OMOTO  
VICE PRESIDENT  
GOVERNMENT AND COMMUNITY AFFAIRS  
HAWAIIAN ELECTRIC COMPANY, INC.  
P. O. Box 2750  
Honolulu, HI 96840-0001

DEAN K. MATSUURA  
DIRECTOR, REGULATORY AFFAIRS  
HAWAIIAN ELECTRIC COMPANY, INC.  
P. O. Box 2750  
Honolulu, HI 96840-0001

THOMAS W. WILLIAMS, JR.  
PETER Y. KIKUTA  
GOODSILL ANDERSON QUINN & STIFEL  
1099 Alakea Street, Suite 1800  
Honolulu, HI 96813  
[Counsel for HECO, HELCO, MECO]

EDWARD REINHARDT, PRESIDENT  
MAUI ELECTRIC COMPANY, LTD.  
P.O. Box 398  
Kahului, HI 96733-6898

JAY IGNACIO, PRESIDENT  
HAWAII ELECTRIC LIGHT COMPANY, LTD.  
P.O. Box 1027  
Hilo, HI 96721-1027

RANDALL J. HEE  
PRESIDENT AND CEO  
KAUAI ISLAND UTILITY COOPERATIVE  
4463 Pahee Street, Suite 1  
Lihue, HI 96766-2000

TIM BLUME  
MICHAEL YAMANE  
KAUAI ISLAND UTILITY COOPERATIVE  
4463 Pahee Street, Suite 1  
Lihue, HI 96766-2000

KENT D. MORIHARA, ESQ.  
KRIS N. NAKAGAWA, ESQ.  
RHONDA L. CHING, ESQ.  
MORIHARA LAU & FONG  
Davies Pacific Center, Suite 400  
841 Bishop Street  
Honolulu, HI 96813  
[Counsel for KIUC]

Dated: November 10, 2008; Haiku, Hawaii

Signed: CARL FREEDMAN  
Carl Freedman